



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

April 11, 1975

The Honorable Andy James
Administrator
Texas Real Estate Commission
P. O. Box 12188, Capitol Station
Austin, Texas 78711

Open Records Decision No. 80

Re: Availability under the
Open Records Act of an
investigative report of the
Real Estate Commission.

Dear Mr. James:

You have requested our decision concerning the availability under the Open Records Act of certain letters pertaining to an investigation of alleged violations of the Real Estate License Act, article 6573a, V. T. C. S. Specifically, one of the letters is the assignment of the case to a field representative and the other is the representative's investigative report. In your request you state your belief that the letters are exempt from public disclosure under sections 3(a)(3), (7), (8), and (11) of the Open Records Act. V. T. C. S., art. 6252-17a.

Section 3(a) makes all information "collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business...public information...(subject to certain exceptions)."

Section 3(a)(3) excepts certain information relating to litigation. While you note in your request that investigations of this type may culminate in litigation, we have held that "the mere chance of litigation is not sufficient to warrant withholding of information." Open Records Decision Nos. 27 (1974) and 29 (1974).

In Attorney General Opinion H-483 (1974), we said that "...the anticipation of litigation must be a reasonable one related to a specific matter as opposed to a remote possibility among a group or classification..." It is our understanding that in this instance no specific litigation is pending or contemplated by the Commission. Thus, this exception is not applicable.

You suggest that the information may be excepted from disclosure under section 3(a)(7), as information within the attorney-client privilege. The information in question is not a communication between an attorney and his client, but a factual report from an agency investigation. This exception is not applicable here.

You contend that the information is excepted from disclosure under section 3(a)(8) as a record of a law enforcement agency. We do not believe that this information is law enforcement information collected by a law enforcement agency within the meaning of that section.

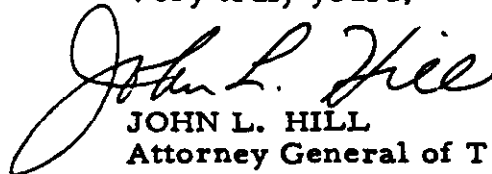
Finally, you ask whether the letters are exempt under section 3(a)(11) which excepts interagency memoranda or letters from public disclosure. As we held in Attorney General Opinion H-436 (1974), this subsection protects only opinions, advice, and recommendations, and:

To the extent that portions of the document requested consist of advice and recommendations, these portions are not required to be disclosed. . . The factual information can and should be severed from the portion containing opinion and advice and is to be disclosed.

We have examined the letters in question and they contain no advice or recommendation; rather they consist of an order to investigate and a factual report. Thus, section 3(a)(11) is inapplicable.

In view of our determination that no exception to which you refer is applicable to the requested information, it is public information and should be disclosed.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee

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